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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1363

Introduced by Assembly Member Jones

**(Principal coauthors: Assembly Members Berg, Canciamilla,
Frommer, Karnette, Liu, Montanez, and Nunez)**

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Goldberg, Klehs, Koretz, Laird, Leno, Levine, Lieber, Lieu,
Parra, Pavley, Saldana, and Spitzer)**

(Coauthors: Senators Kuehl, Ortiz, and Torlakson)

February 22, 2005

An act to amend Sections 27, 101, 130, and 144 of, and to add Chapter 6 (commencing with Section 6500) to Division 3 of, the Business and Professions Code, to amend Sections 1610, 1822, 1826, 1829, 1830, 1850, 1851, 2215, 2250, 2253, 2320, 2321, 2340, 2342, 2343, 2401, 2610, 2620, 2620.2, 2623, 2640, 2640.1, 2641, 2653, 2701, 2850, 2851, 2852, 2853, 2854, 2855, and 2920 of, to add Sections 1456, 1457, 1458, 2113, 2250.1, 2250.2, 2250.5, and 2410

to, and to repeal Sections 2342.5 and 2344 of, the Probate Code, and to add Division 8.7 (commencing with Section 9800) to the Welfare and Institutions Code, relating to conservatorship and guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as amended, Jones. Omnibus Conservatorship and Guardianship Reform Act of 2006.

Existing law governs the establishment of conservatorships and guardianships. Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship. Existing law requires the Department of Justice to maintain a statewide registry of conservators, guardians, and trustees. A court may not appoint a person as a conservator, guardian, or trustee unless that person is registered if he or she is required to do so.

~~This bill would enact the Omnibus Conservatorship and Guardianship Reform Act of 2006. Commencing January 1, 2008, the act would require professional conservators and guardians to be licensed and would prohibit a court from appointing nonlicensed professional conservators and guardians. The bill would create the California Board of Conservators and Guardians in the Department of Consumer Affairs to enforce and administer the licensing program for professional conservators and guardians, as defined, until July 1, 2012. The bill would create the Professional Fiduciary Fund, for deposit of licensing fees, available for the expenses of the board, upon appropriation.~~

~~The bill would establish qualifications, including educational and training criteria, for applicants for licensure. The bill would require the board, among other things, to draft a Fiduciary's Code of Ethics. The bill would authorize the board to take specified disciplinary action, as appropriate, and make referrals to the Attorney General for violations of the statute or a breach of fiduciary duty. The bill would also remove conservators and guardians from the provisions governing registry, effective January 1, 2008, and require that the registry for trustees be maintained by the Department of Consumer Affairs, rather than the Department of Justice.~~

The bill would require the Judicial Council, among other things, to adopt specified rules of court relating to conservatorships and guardianships and to enact educational programs for nonlicensed

conservators and guardians. The bill would also require the Judicial Council to establish qualifications and educational classes for *judges who are regularly assigned to hear probate matters*, any court-employed staff attorney, examiner, and investigator or court-appointed attorney, to require educational classes for these attorneys, probate judges, and public guardians, to establish conservatorship accountability measures, and to develop a form to provide notice regarding free assistance provided by the court to conservators.

The bill would also make various changes to provisions governing conservatorship, including requiring an annual, rather than a biennial, review of conservatorships at a noticed hearing, requiring conservators and guardians to present an annual, rather than a biennial, accounting, prohibiting a court from reducing the amount of a bond in conservatorship proceedings without good cause, and imposing new duties on court investigators with respect to cases involving proposed conservatees, among other changes.

The bill would establish in the California Department of Aging the Office of Conservatorship Ombudsman to collect and analyze data relative to complaints about conservatorships and to investigate and resolve complaints and concerns communicated by or on behalf of conservatees.

The bill would become operative only if SB 1116, SB 1550, and SB 1716 are enacted and become effective on or before January 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Omnibus Conservatorship and Guardianship Reform Act of
- 3 2006.
- 4 SEC. 2. The Legislature finds and declares the following:
- 5 (a) The rate of increase in the number of Californians who are
- 6 65 years of age or older is surpassing that in other states. The
- 7 number of people who are 65 years of age will grow from 3.7
- 8 million people in the year 2000, to 6.3 million in the year 2020.
- 9 The fastest growing segment of California's population, expected
- 10 to increase by 148 percent between the years 1990 and 2020, is
- 11 people who are 85 years of age or older. As many as 10 percent

1 of the population over 65 years of age and 25 percent of the
2 population over 85 years of age will suffer from Alzheimer's
3 disease.

4 (b) As the population of California continues to grow and age,
5 an increasing number of persons in the state are unable to provide
6 properly for their personal needs, to manage their financial
7 resources, or to resist fraud or undue influence.

8 (c) One result of these trends is the growing number of
9 persons acting as conservators on behalf of other persons or their
10 estates. It is estimated that about 500 professional conservators
11 oversee \$1.5 billion in assets. Over 5,000 conservatorship
12 petitions are filed each year in California.

13 (d) Probate courts oversee the work of conservators, but, in
14 part due to a lack of resources and conflicting priorities, courts
15 often do not provide sufficient oversight in conservatorship cases
16 to ensure that the best interests of conservatees are protected.

17 (e) Professional fiduciaries are not adequately regulated at
18 present. This lack of regulation can result in the neglect, or the
19 physical or financial abuse, of the clients professional fiduciaries
20 are supposed to serve. For that reason, it is necessary to create a
21 program to license certain professional fiduciaries in order to
22 protect the public health, safety, and welfare.

23 (f) Public guardians do not have adequate resources to
24 represent the best interests of qualifying Californians and,
25 therefore, many in need of the assistance of a conservator go
26 without.

27 (g) As a result, the conservatorship system in California is
28 fundamentally flawed and in need of reform.

29 ~~SEC. 3. Section 27 of the Business and Professions Code is~~
30 ~~amended to read:~~

31 ~~27. (a) Every entity specified in subdivision (b), on or after~~
32 ~~July 1, 2001, shall provide on the Internet information regarding~~
33 ~~the status of every license issued by that entity in accordance~~
34 ~~with the California Public Records Act (Chapter 3.5~~
35 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
36 ~~Government Code) and the Information Practices Act of 1977~~
37 ~~(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part~~
38 ~~4 of Division 3 of the Civil Code). The public information to be~~
39 ~~provided on the Internet shall include information on suspensions~~
40 ~~and revocations of licenses issued by the entity and other related~~

1 enforcement action taken by the entity relative to persons,
2 businesses, or facilities subject to licensure or regulation by the
3 entity. In providing information on the Internet, each entity shall
4 comply with the Department of Consumer Affairs Guidelines for
5 Access to Public Records. The information may not include
6 personal information, including home telephone number, date of
7 birth, or social security number. Each entity shall disclose a
8 licensee's address of record. However, each entity shall allow a
9 licensee to provide a post office box number or other alternate
10 address, instead of his or her home address, as the address of
11 record. This section shall not preclude an entity from also
12 requiring a licensee, who has provided a post office box number
13 or other alternative mailing address as his or her address of
14 record, to provide a physical business address or residence
15 address only for the entity's internal administrative use and not
16 for disclosure as the licensee's address of record or disclosure on
17 the Internet.

18 (b) Each of the following entities within the Department of
19 Consumer Affairs shall comply with the requirements of this
20 section:

21 (1) The Acupuncture Board shall disclose information on its
22 licensees.

23 (2) The Board of Behavioral Sciences shall disclose
24 information on its licensees, including marriage and family
25 therapists, licensed clinical social workers, and licensed
26 educational psychologists.

27 (3) The Dental Board of California shall disclose information
28 on its licensees.

29 (4) The State Board of Optometry shall disclose information
30 regarding certificates of registration to practice optometry,
31 statements of licensure, optometric corporation registrations,
32 branch office licenses, and fictitious name permits of their
33 licensees.

34 (5) The Board for Professional Engineers and Land Surveyors
35 shall disclose information on its registrants and licensees.

36 (6) The Structural Pest Control Board shall disclose
37 information on its licensees, including applicators, field
38 representatives, and operators in the areas of fumigation, general
39 pest and wood destroying pests and organisms, and wood roof
40 cleaning and treatment.

~~(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.~~

~~(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.~~

~~(9) The Cemetery Program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.~~

~~(10) The Funeral Directors and Embalmers Program shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.~~

~~(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.~~

~~(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.~~

~~(13) The California Board of Conservators and Guardians shall disclose information on its licensees.~~

~~(e) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.~~

~~SEC. 4. Section 101 of the Business and Professions Code is amended to read:~~

~~101. The department is comprised of:~~

~~(a) The Dental Board of California.~~

~~(b) The Medical Board of California.~~

~~(c) The State Board of Optometry.~~

~~(d) The California State Board of Pharmacy.~~

~~(e) The Veterinary Medical Board.~~

~~(f) The California Board of Accountancy.~~

~~(g) The California Architects Board.~~

~~(h) The Bureau of Barbering and Cosmetology.~~

~~(i) The Board for Professional Engineers and Land Surveyors.~~

1 ~~(j) The Contractors' State License Board.~~
2 ~~(k) The Bureau for Private Postsecondary and Vocational~~
3 ~~Education.~~
4 ~~(l) The Structural Pest Control Board.~~
5 ~~(m) The Bureau of Home Furnishings and Thermal Insulation.~~
6 ~~(n) The Board of Registered Nursing.~~
7 ~~(o) The Board of Behavioral Sciences.~~
8 ~~(p) The State Athletic Commission.~~
9 ~~(q) The Cemetery and Funeral Bureau.~~
10 ~~(r) The State Board of Guide Dogs for the Blind.~~
11 ~~(s) The Bureau of Security and Investigative Services.~~
12 ~~(t) The Court Reporters Board of California.~~
13 ~~(u) The Board of Vocational Nursing and Psychiatric~~
14 ~~Technicians.~~
15 ~~(v) The Landscape Architects Technical Committee.~~
16 ~~(w) The Bureau of Electronic and Appliance Repair.~~
17 ~~(x) The Division of Investigation.~~
18 ~~(y) The Bureau of Automotive Repair.~~
19 ~~(z) The State Board of Registration for Geologists and~~
20 ~~Geophysicists.~~
21 ~~(aa) The Respiratory Care Board of California.~~
22 ~~(ab) The Acupuncture Board.~~
23 ~~(ac) The Board of Psychology.~~
24 ~~(ad) The California Board of Podiatric Medicine.~~
25 ~~(ae) The Physical Therapy Board of California.~~
26 ~~(af) The Arbitration Review Program.~~
27 ~~(ag) The Committee on Dental Auxiliaries.~~
28 ~~(ah) The Hearing Aid Dispensers Bureau.~~
29 ~~(ai) The Physician Assistant Committee.~~
30 ~~(aj) The Speech-Language Pathology and Audiology Board.~~
31 ~~(ak) The California Board of Occupational Therapy.~~
32 ~~(al) The Osteopathic Medical Board of California.~~
33 ~~(am) The Bureau of Naturopathic Medicine.~~
34 ~~(an) The California Board of Conservators and Guardians.~~
35 ~~(ao) Any other boards, offices, or officers subject to its~~
36 ~~jurisdiction by law.~~
37 ~~SEC. 5. Section 130 of the Business and Professions Code is~~
38 ~~amended to read:~~
39 ~~130. (a) Notwithstanding any other provision of law, the~~
40 ~~term of office of any member of an agency designated in~~

1 ~~subdivision (b) shall be for a term of four years expiring on June~~
2 ~~1.~~

3 ~~(b) Subdivision (a) applies to the following boards or~~
4 ~~committees:~~

5 ~~(1) The Medical Board of California.~~
6 ~~(2) The California Board of Podiatric Medicine.~~
7 ~~(3) The Physical Therapy Board of California.~~
8 ~~(4) The Board of Registered Nursing.~~
9 ~~(5) The Board of Vocational Nursing and Psychiatric~~
10 ~~Technicians.~~

11 ~~(6) The State Board of Optometry.~~
12 ~~(7) The California State Board of Pharmacy.~~
13 ~~(8) The Veterinary Medical Board.~~
14 ~~(9) The California Architects Board.~~
15 ~~(10) The Landscape Architect Technical Committee.~~
16 ~~(11) The Board for Professional Engineers and Land~~
17 ~~Surveyors.~~

18 ~~(12) The Contractors' State License Board.~~
19 ~~(13) The State Board of Guide Dogs for the Blind.~~
20 ~~(14) The Board of Behavioral Sciences.~~
21 ~~(15) The Structural Pest Control Board.~~
22 ~~(16) The Bureau of Electronic and Appliance Repair.~~
23 ~~(17) The Court Reporters Board of California.~~
24 ~~(18) The State Board for Geologists and Geophysicists.~~
25 ~~(19) The State Athletic Commission.~~
26 ~~(20) The Osteopathic Medical Board of California.~~
27 ~~(21) The Respiratory Care Board of California.~~
28 ~~(22) The Acupuncture Board.~~
29 ~~(23) The Board of Psychology.~~
30 ~~(24) The California Board of Conservators and Guardians.~~

31 ~~SEC. 6. Section 144 of the Business and Professions Code is~~
32 ~~amended to read:~~

33 ~~144. (a) Notwithstanding any other provision of law, an~~
34 ~~agency designated in subdivision (b) shall require an applicant to~~
35 ~~furnish to the agency a full set of fingerprints for purposes of~~
36 ~~conducting criminal history record checks. Any agency~~
37 ~~designated in subdivision (b) may obtain and receive, at its~~
38 ~~discretion, criminal history information from the Department of~~
39 ~~Justice and the United States Federal Bureau of Investigation.~~

40 ~~(b) Subdivision (a) applies to the following:~~

1 ~~(1) California Board of Accountancy.~~
2 ~~(2) State Athletic Commission.~~
3 ~~(3) Board of Behavioral Sciences.~~
4 ~~(4) Court Reporters Board of California.~~
5 ~~(5) State Board of Guide Dogs for the Blind.~~
6 ~~(6) California State Board of Pharmacy.~~
7 ~~(7) Board of Registered Nursing.~~
8 ~~(8) Veterinary Medical Board.~~
9 ~~(9) Registered Veterinary Technician Committee.~~
10 ~~(10) Board of Vocational Nursing and Psychiatric~~
11 ~~Technicians.~~
12 ~~(11) Respiratory Care Board of California.~~
13 ~~(12) Hearing Aid Dispensers Advisory Commission.~~
14 ~~(13) Physical Therapy Board of California.~~
15 ~~(14) Physician Assistant Committee of the Medical Board of~~
16 ~~California.~~
17 ~~(15) Speech-Language Pathology and Audiology Board.~~
18 ~~(16) Medical Board of California.~~
19 ~~(17) State Board of Optometry.~~
20 ~~(18) Acupuncture Board.~~
21 ~~(19) Cemetery and Funeral Bureau.~~
22 ~~(20) Bureau of Security and Investigative Services.~~
23 ~~(21) Division of Investigation.~~
24 ~~(22) Board of Psychology.~~
25 ~~(23) The California Board of Occupational Therapy.~~
26 ~~(24) Structural Pest Control Board.~~
27 ~~(25) Contractors' State License Board.~~
28 ~~(26) Bureau of Naturopathic Medicine.~~
29 ~~(27) The California Board of Conservators and Guardians.~~
30 ~~(e) The provisions of paragraph (24) of subdivision (b) shall~~
31 ~~become operative on July 1, 2004. The provisions of paragraph~~
32 ~~(25) of subdivision (b) shall become operative on the date on~~
33 ~~which sufficient funds are available for the Contractors' State~~
34 ~~License Board and the Department of Justice to conduct a~~
35 ~~criminal history record check pursuant to this section or on July~~
36 ~~1, 2005, whichever occurs first.~~
37 ~~SEC. 7. Chapter 6 (commencing with Section 6500) is added~~
38 ~~to Division 3 of the Business and Professions Code, to read:~~

~~CHAPTER 6. PROFESSIONAL CONSERVATORS AND GUARDIANS
Act~~

~~6500. This chapter shall be known and may be cited as the
Professional Conservators and Guardians Act.~~

~~6501. As used in this chapter, the following terms have the
following meanings:~~

~~(a) “Board” means the California Board of Conservators and
Guardians.~~

~~(b) “Client” means the individual served by a professional
conservator or guardian.~~

~~(c) “Department” means the Department of Consumer Affairs.~~

~~(d) “Professional conservator or guardian” means a person
who, for compensation, acts as a conservator or guardian for two
or more persons not related to the professional conservator or
guardian or each other by blood, adoption, or marriage,
registered domestic partnership, or a relationship that satisfies the
requirements of subdivision (a) and paragraphs (1) to (4),
inclusive, and paragraph (6) of subdivision (b) of Section 297 of
the Family Code. A “professional conservator or guardian” does
not include the following:~~

~~(1) Any conservator or guardian who serves as a conservator
of the estate or a guardian of the estate only, and is one of the
following:~~

~~(A) A trust company, as defined in Section 83 of the Probate
Code.~~

~~(B) An FDIC-insured institution, its holding companies,
subsidiaries, or affiliates. For the purposes of this subparagraph,
“affiliate” means any entity that shares an ownership interest
with or that is under the common control of, the FDIC-insured
institution.~~

~~(C) A person employed by an entity described in subparagraph
(A) or (B) who is acting as a conservator or guardian in the
course and scope of employment by the entity described in
subparagraph (A) or (B).~~

~~(2) Any public officer or public agency, including the public
guardian, public conservator, or other agency of the State of
California or of a county of California.~~

1 ~~(3) Any attorney licensed to practice law in the State of~~
2 ~~California who acts as trustee of only attorney-client trust~~
3 ~~accounts, as defined in Section 6211.~~

4 ~~(4) Any conservator who resided in the same home with the~~
5 ~~conservatee immediately prior to the condition or event that gave~~
6 ~~rise to the necessity of a conservatorship. This subdivision does~~
7 ~~not create any order or preference of appointment, but simply~~
8 ~~exempts a conservator described by this subdivision from~~
9 ~~licensure.~~

10 ~~(5) A nonrelated guardian of the person of a minor appointed~~
11 ~~by the court as the result of the selection of a permanency plan~~
12 ~~for a dependent child or ward pursuant to Section 366.26 of the~~
13 ~~Welfare and Institutions Code. It also does not include a~~
14 ~~nonrelated guardian of the person of a minor appointed pursuant~~
15 ~~to Section 1514 of the Probate Code if that child is in receipt of~~
16 ~~AFDC-FC payments and case management services from the~~
17 ~~county welfare department, as evidenced by a Notice of Action~~
18 ~~of AFDC-FC eligibility.~~

19 ~~(6) If the conservatee receives Supplemental Security Income,~~
20 ~~any person who meets all of the following criteria:~~

21 ~~(A) The person acts as conservator of the person only.~~

22 ~~(B) The person is the representative payee for the~~
23 ~~conservatee's Supplemental Security Income and provides for~~
24 ~~substantially all of the conservatee's care, support, and~~
25 ~~maintenance therefrom.~~

26 ~~(C) The person receives no compensation other than from the~~
27 ~~conservatee's Supplemental Security Income.~~

28 ~~(D) The conservatee resides in the home of the person.~~

29 ~~6502. (a) There is hereby created the California Board of~~
30 ~~Conservators and Guardians in the department.~~

31 ~~(b) The board shall enforce and administer this chapter.~~

32 ~~(c) The board shall be comprised of seven members. The~~
33 ~~members shall include two professional fiduciaries, including~~
34 ~~one from the public sector, and one from the private sector who~~
35 ~~is licensed under this chapter. The remaining members shall~~
36 ~~include a court investigator, a member of the State Bar of~~
37 ~~California who is certified as a specialist in probate, estate~~
38 ~~planning, and trust law, two members of nonprofit organizations~~
39 ~~advocating on behalf of conservatees or guardians, and the~~
40 ~~Conservator Ombudsman. The Governor shall appoint one of the~~

~~1 professional fiduciaries, the court investigator, and the~~
~~2 Conservator Ombudsman. The Senate Rules Committee shall~~
~~3 appoint one professional fiduciary and the member of the State~~
~~4 Bar of California. The Speaker of the Assembly shall appoint the~~
~~5 two nonprofit organization members. All members shall be~~
~~6 residents of California and shall serve no more than two~~
~~7 four-year terms.~~

~~8 (d) The Governor shall remove from the board any member,~~
~~9 except a public member, whose permit to practice has become~~
~~10 void, revoked, or suspended. The Governor may, after hearing,~~
~~11 remove any member of the board for neglect of duty or other just~~
~~12 cause.~~

~~13 (e) Subject to Sections 107 and 154, the board may employ an~~
~~14 executive officer and other staff and employees.~~

~~15 (f) The board may adopt, repeal, or amend any regulations as~~
~~16 may be reasonably necessary and expedient for the orderly~~
~~17 conduct of its affairs and for the administration of this chapter.~~
~~18 The regulations shall be adopted in accordance with Chapter 3.5~~
~~19 (commencing with Section 11340) of Part 1 of Division 3 of Title~~
~~20 2 of the Government Code.~~

~~21 6503. Protection of the public shall be the highest priority of~~
~~22 the board in exercising its licensing, regulatory, and disciplinary~~
~~23 functions. Whenever the protection of the public is inconsistent~~
~~24 with another interest sought to be promoted, the protection of the~~
~~25 public shall be paramount.~~

~~26 6504. Service on the board shall be voluntary, and members~~
~~27 shall not be compensated for serving, but shall be reimbursed for~~
~~28 expenses incurred in the performance of their duties. All fees~~
~~29 collected by the board shall be paid into the State Treasury and~~
~~30 shall be credited to the Professional Fiduciary Fund which is~~
~~31 hereby created. The moneys in the fund shall be available, upon~~
~~32 appropriation by the Legislature, for expenditure by the board to~~
~~33 defray its expenses and to otherwise administer this chapter.~~

~~34 6505. Board members shall be immune from liability for any~~
~~35 act pursuant to this chapter, if the member has acted in good~~
~~36 faith.~~

~~37 6506. (a) The board shall meet at least quarterly, subject to~~
~~38 the Bagley-Keene Open Meeting Act (Article 9 (commencing~~
~~39 with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title~~
~~40 2 of the Government Code.) A majority of the board shall~~

1 constitute a quorum for the transaction of any business at any
2 meeting of the board. The board shall, among other things, issue
3 a license to any applicant who meets the requirements of this
4 chapter and who meets any other requirements in accordance
5 with applicable state law.

6 The department shall provide the licensee with a certificate
7 identifying him or her as a “licensed professional conservator or
8 guardian.” If the board denies the application for licensure, it
9 shall notify the department, which shall give the applicant notice
10 of the denial and the right to appeal that denial to the board
11 pursuant to Section 11504 of the Government Code.

12 (b) The board shall approve classes qualifying for the 15 hours
13 of prelicense training, as well as classes qualifying for the annual
14 continuing education requirement established by this chapter.

15 (c) The board shall maintain a current list of all approved
16 classes.

17 (d) The board shall arrange for the preparation and
18 administration of licensing examinations.

19 6507. (a) A person applying for licensure as a professional
20 conservator or guardian shall meet all of the following
21 requirements:

22 (1) At least 21 years of age.

23 (2) A United States citizen.

24 (3) No felony convictions.

25 (4) Completed the mandatory 15 hours of prelicensing
26 training.

27 (5) Passed the licensing examination.

28 (6) Met the qualifications for private professional conservators
29 or private professional guardians as required pursuant to Sections
30 2342.5, 2344, and 2850 of the Probate Code, provided that those
31 professional conservators and guardians with cases pending as of
32 January 1, 2006, shall satisfy the required qualifications.

33 (7) Agreed to adhere to the Professional Fiduciary’s Code of
34 Ethics and all requirements adopted by the board.

35 (b) Each applicant shall furnish a full set of fingerprints for
36 purposes of conducting a criminal history record check.
37 Fingerprints furnished pursuant to this subdivision shall be
38 submitted in an electronic format if readily available. The board
39 shall use the fingerprints furnished by an applicant to obtain
40 criminal history information on the applicant from the

1 Department of Justice and the United States Federal Bureau of
2 Investigation, and the board may obtain any subsequent arrest
3 information that is available.

4 (e) Each applicant shall submit an application for licensure,
5 along with a nonrefundable application fee in an amount
6 determined by the board that includes all costs associated with
7 the licensure, including investigatory costs.

8 (d) The board shall set the fees to be paid for the licensing
9 application and examination, as well as the fee to be paid for
10 license renewal. The cost shall not be borne by the conservatee or
11 ward.

12 (e) The board shall adopt rules necessary to assure appropriate
13 supervision of employees or contractors of conservators or
14 guardians. An employee or contractor providing delegated,
15 client-related services shall have appropriate background
16 reviews, training, and direct supervision by the licensed
17 conservator or guardian.

18 6508. Commencing January 1, 2008, both of the following
19 shall apply:

20 (a) No person shall act as a professional conservator or
21 guardian unless that person is licensed as a professional
22 conservator or guardian in accordance with the provisions of this
23 chapter.

24 (b) A court shall not appoint a person to serve as a
25 professional conservator or guardian unless that person is
26 licensed as a professional conservator or guardian pursuant to
27 this chapter.

28 6509. The board staff shall review all applications for
29 licensure and refer those recommended for approval to the board.
30 The board staff shall not recommend for approval any applicant
31 as follows:

32 (a) Not having met the qualifications for licensure under this
33 chapter.

34 (b) Convicted of any crime related to the functions and duties
35 of a fiduciary.

36 (c) Engaged in fraud or deceit in applying for licensure under
37 this chapter.

38 (d) Engaged in dishonesty, fraud, or gross negligence in
39 performing the functions or duties of a professional conservator
40 or guardian prior to the effective date of this chapter.

1 ~~(e) Removed as a fiduciary by a court for breach of fiduciary~~
2 ~~duty prior to the effective date of this chapter, and all appeals~~
3 ~~have been taken, or the time to file an appeal has expired.~~

4 ~~6510. (a) To qualify for licensure, applicants shall complete~~
5 ~~15 hours of prelicensing education provided by a board-approved~~
6 ~~educational program.~~

7 ~~(b) To maintain licensure, a licensee shall complete 30 hours~~
8 ~~of approved continuing education courses every two years, and~~
9 ~~shall pay the biennial renewal fee set by the board. A licensee~~
10 ~~shall receive credit for 15 hours of approved continuing~~
11 ~~education courses in the year in which the professional~~
12 ~~conservator or guardian is initially licensed.~~

13 ~~(c) The cost of any educational program mandated by this~~
14 ~~chapter shall not be borne by any client served by a professional~~
15 ~~conservator or guardian.~~

16 ~~6511. As a requirement for licensure, applicants shall take~~
17 ~~and pass the licensing examination administered by the board.~~
18 ~~The board shall determine the cost of the examination, and the~~
19 ~~frequency with which it shall be administered.~~

20 ~~6512. A person who has been notified of the approval of his~~
21 ~~or her application for licensure may identify himself or herself as~~
22 ~~a “licensed professional conservator or guardian.”~~

23 ~~6513. Individuals, entities, agencies, and associations that~~
24 ~~propose to offer educational programs qualifying for the~~
25 ~~prelicensing educational or continuing educational requirements~~
26 ~~of this chapter shall apply for, and obtain, approval by the board.~~

27 ~~6514. (a) Licenses shall expire at 12 midnight on the last day~~
28 ~~of the month of the licensee’s legal birthday during the second~~
29 ~~year of a two-year term if not renewed.~~

30 ~~(b) A license may be renewed upon proof of the licensee’s~~
31 ~~compliance with the continuing education requirements of this~~
32 ~~chapter, and payment of the renewal fee set by the board;~~
33 ~~provided that the licensee has not engaged in conduct that would~~
34 ~~justify the board’s refusal to grant the renewal. Acts justifying~~
35 ~~the board’s refusal to renew a license shall include any of the~~
36 ~~following:~~

37 ~~(1) Conviction of any crime related to the qualifications,~~
38 ~~functions, and duties of a professional conservator or guardian.~~

39 ~~(2) Fraud or deceit in obtaining a license under this chapter.~~

~~(3) Dishonesty, fraud, or gross negligence of the professional conservator or guardian in performing the functions or duties of a professional conservator or guardian.~~

~~(4) Removal by a court for breach of fiduciary duty.~~

~~6515. (a) All proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except as provided in this chapter. The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings, and his or her services shall be a charge against it.~~

~~(b) The board may discipline a licensee by any, or a combination, of the following methods:~~

~~(1) Placing the license on probation with terms and conditions.~~

~~(2) Suspending the license and the right to serve as a conservator or guardian for a period not to exceed one year.~~

~~(3) Revoking the license.~~

~~(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.~~

~~(5) Referral to the Attorney General or local district attorney for criminal prosecution~~

~~(6) Taking other action as the board, in its discretion, deems proper.~~

~~(c) The board may deny or discipline a licensee for unprofessional conduct, including, but not limited to, any of the following:~~

~~(1) Incompetence or gross negligence in carrying out usual conservator or guardian functions.~~

~~(2) Repeated similar negligent acts in carrying out usual conservator or guardian functions.~~

~~(3) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California professional fiduciary licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.~~

~~(4) Procuring a license by fraud, misrepresentation, or mistake.~~

1 ~~(5) Violating or attempting to violate, directly or indirectly, or~~
2 ~~assisting in or abetting the violation of, or conspiring to violate,~~
3 ~~any provision or term of this chapter or any regulation adopted~~
4 ~~pursuant to this chapter.~~

5 ~~(6) Making or giving any false statement or information in~~
6 ~~connection with the application for issuance or renewal of a~~
7 ~~license.~~

8 ~~(7) Conviction of a crime or of any offense substantially~~
9 ~~related to the qualifications, functions, or duties of a licensee, in~~
10 ~~which event the record of the conviction shall be conclusive~~
11 ~~evidence thereof.~~

12 ~~(8) Impersonating an applicant, or acting as proxy for an~~
13 ~~applicant, in any examination required under this chapter for the~~
14 ~~issuance of a license.~~

15 ~~(9) Impersonating a licensed practitioner, or permitting or~~
16 ~~allowing another unlicensed person to use a license.~~

17 ~~(10) Committing any fraudulent, dishonest, or corrupt act that~~
18 ~~is substantially related to the qualifications, functions, or duties~~
19 ~~of a licensee.~~

20 ~~(11) Committing any act punishable as a sexually related~~
21 ~~crime, if that act is substantially related to the qualifications,~~
22 ~~functions, or duties of a licensee; in which event a certified copy~~
23 ~~of the record of conviction shall be conclusive evidence thereof.~~

24 ~~(12) Mistreating or abusing any conservatee or guardian.~~

25 ~~(13) Falsifying or making grossly incorrect or grossly~~
26 ~~inconsistent statements to the court or to court personnel.~~

27 ~~(14) Delegating to an unlicensed employee or person a service~~
28 ~~that requires the knowledge, skills, abilities, or judgment of a~~
29 ~~licensee.~~

30 ~~(g) The board shall immediately report any disciplined~~
31 ~~licensee to each court in this state that has appointed the~~
32 ~~disciplined licensee as a conservator or guardian.~~

33 ~~(h) (1) A holder of a license that has been revoked,~~
34 ~~suspended, or placed on probation, may petition the board for~~
35 ~~reinstatement or modification of a penalty, including reduction or~~
36 ~~termination of probation, after a minimum period has elapsed~~
37 ~~from either the effective date of the decision ordering that~~
38 ~~disciplinary action, or, if the order of the board or any portion of~~
39 ~~it was stayed, from the date the disciplinary action was actually~~

1 implemented in its entirety. The minimum periods that shall
2 elapse prior to a petition are as follows:

3 (A) For a license that was revoked for any reason other than
4 mental or physical illness, at least three years.

5 (B) For early termination of probation scheduled for three or
6 more years, at least two years.

7 (C) For modification of a penalty, reinstatement of a license
8 revoked for mental or physical illness, or termination of
9 probation scheduled for less than three years, at least one year.

10 (D) Any lesser period specified in the disciplinary order by the
11 board, in its discretion, provided that the period shall not be less
12 than one year.

13 (2) The petition submitted shall contain any information
14 required by the board, which may include a current set of
15 fingerprints accompanied by the fingerprinting fee.

16 (3) The board shall give notice to the Attorney General of the
17 filing of the petition. The petitioner and the Attorney General
18 shall be given timely notice by letter of the time and place of the
19 hearing on the petition, and an opportunity to present both oral
20 and documentary evidence and argument to the board. The
21 petitioner shall at all times have the burden of proof to establish
22 by clear and convincing evidence that he or she is entitled to the
23 relief sought in the petition.

24 (4) The board itself shall hear the petition and the
25 administrative law judge shall prepare a written decision setting
26 forth the reasons supporting the decision.

27 (5) The board may grant or deny the petition, or may impose
28 any terms and conditions that it reasonably deems appropriate as
29 a condition of reinstatement or reduction of penalty.

30 (6) The board may refuse to consider a petition while the
31 petitioner is under sentence for any criminal offense, including
32 any period during which the petitioner is on court-imposed
33 probation or parole or subject to an order of registration pursuant
34 to Section 290 of the Penal Code.

35 (7) No petition shall be considered while there is an accusation
36 or petition to revoke probation pending against the petitioner.

37 6516. The board shall draft and adopt the Professional
38 Fiduciary's Code of Ethics in accordance with Chapter 3.5
39 (commencing with Section 11340) of Part 1 of Division 3 of Title
40 2 of the Government Code. The Professional Fiduciary's Code of

1 ~~Ethics shall comply with all statutory requirements as well as~~
2 ~~requirements developed by the courts and the Judicial Council. A~~
3 ~~copy of the Professional Fiduciary's Code of Ethics shall be~~
4 ~~provided to each person who requests an application for~~
5 ~~licensure.~~

6 ~~6517. This chapter shall become inoperative on July 1, 2012,~~
7 ~~and, as of January 1, 2013, is repealed, unless a later enacted~~
8 ~~statute, that becomes operative on or before January 1, 2013,~~
9 ~~deletes or extends the dates on which it becomes inoperative and~~
10 ~~is repealed. The repeal of this chapter renders the board subject~~
11 ~~to the review required by Division 1.2 (commencing with Section~~
12 ~~473).~~

13 ~~SEC. 8.~~

14 *SEC. 3.* Section 1456 is added to the Probate Code, to read:

15 1456. (a) On or before July 1, 2007, the Judicial Council
16 shall adopt a rule of court that shall do all of the following:

17 (1) Specifies the qualifications of a court-employed staff
18 attorney, examiner, and investigator, and any attorney appointed
19 pursuant to Sections 1470 and 1471.

20 (2) Specifies the number of hours of education in classes
21 related to conservatorships or guardianships that a judge who is
22 regularly assigned to hear probate matters, court-employed staff
23 attorney, examiner, and investigator, public guardian, and any
24 attorney appointed pursuant to Sections 1470 and 1471 shall
25 complete each year.

26 (3) Specifies the particular subject matter that shall be
27 included in the education required each year.

28 (4) Requires a judge who is regularly assigned to hear probate
29 matters, court-employed staff attorney, examiner, and
30 investigator, public guardian, and any attorney appointed
31 pursuant to Sections 1470 and 1471 to certify to the court the
32 completion of the yearly specified hours of education.

33 (b) In formulating the rule required by this section, the Judicial
34 Council shall consult with interested parties, including, but not
35 limited to, the California Judges Association, the California
36 Association of Superior Court Investigators, the California State
37 Association of Public Administrators, Public Guardians, and
38 Public Conservators, the California Bar Association, the National
39 Guardianship Association, and the Association of Professional
40 Geriatric Care Managers.

1 ~~SEC. 9.~~

2 ~~SEC. 4.~~ Section 1457 is added to the Probate Code, to read:

3 1457. In order to assist relatives and friends who may seek
4 appointment as a nonprofessional conservator or guardian:

5 (a) The Judicial Council shall develop a short educational
6 program of no more than three hours that is user-friendly and
7 shall make that program available free of charge to each
8 conservator~~and~~ or guardian who is not required to be licensed as
9 a professional conservator or guardian pursuant to Chapter 6
10 (commencing with Section 6500) of Division 3 of the Business
11 and Professions Code. The program may be available by video
12 presentation or Internet access.

13 (b) Each probate court shall maintain an office to assist
14 conservators and guardians who are not required to be licensed as
15 professional conservators or guardians pursuant to Chapter 6
16 (commencing with Section 6500) of Division 3 of the Business
17 and Professions Code. Services of the office shall include
18 providing educational materials to conservators and guardians,
19 distributing necessary court forms, providing assistance in
20 completing forms, and providing referrals to community agencies
21 and resources that provide services for conservators and
22 guardians. These services shall be offered free of charge.

23 ~~SEC. 10.~~

24 ~~SEC. 5.~~ Section 1458 is added to the Probate Code, to read:

25 1458. (a) On or before January 1, 2008, the Judicial Council
26 shall develop conservatorship accountability measures for use by
27 each court. The measures shall include at a minimum:

28 (1) The number of temporary conservatorships requested and
29 the number granted, noting the number of hearings in which
30 notice was waived, the number of hearings in which the proposed
31 conservatee attended the hearing, the number of contested
32 hearings, the number of hearings in which bond was waived, and
33 whether the proposed conservator was a professional
34 conservator, the public guardian, or a person *who is* not required
35 to register under Chapter 6 (commencing with Section 6500) of
36 Division 3 of the Business and Professions Code.

37 (2) The number of permanent conservatorships requested and
38 the number granted, noting the number of hearings in which the
39 proposed conservatee attended the hearing, the number of
40 contested hearings, the number of hearings in which bond was

1 waived, and whether the proposed conservator was a professional
2 conservator, the public guardian, or a person *who is* not required
3 to register under Chapter 6 (commencing with Section 6500) of
4 Division 3 of the Business and Professions Code.

5 (3) The number of accountings filed (A) over 30 days late and
6 (B) over 90 days late.

7 (4) The number of cases that required an investigation by the
8 court investigator, the number of cases in which the investigation
9 was timely completed, and the number of cases in which the
10 review was completed, but not timely.

11 (5) The number of cases that required court review, the
12 number of cases in which the court review occurred timely, and
13 the number of cases in which court review was completed, but
14 not timely.

15 (b) Each court shall collect conservatorship accountability data
16 and report that data to the Judicial Council every quarter. The
17 Judicial Council shall report that data annually to the Legislature
18 and the Conservator Ombudsman, and shall post the data on its
19 Web site.

20 ~~SEC. 11.~~

21 *SEC. 6.* Section 1610 of the Probate Code is amended to read:

22 1610. (a) The Legislature finds and declares that it is in the
23 best interest of children to be raised in a permanent, safe, stable,
24 and loving environment.

25 (b) Unwarranted petitions, applications, or motions other than
26 discovery motions after the guardianship has been established
27 create an environment that can be harmful to children and are
28 inconsistent with the goals of permanency, safety, and stability.

29 ~~SEC. 12.~~

30 *SEC. 7.* Section 1822 of the Probate Code is amended to read:

31 1822. (a) At least 15 days before the hearing on the petition
32 for appointment of a conservator, notice of the time and place of
33 the hearing shall be given as provided in this section. The notice
34 shall include information about free assistance provided by the
35 court to conservators pursuant to Section 1457 and about the
36 complaint process available through the Conservator
37 Ombudsman established pursuant to Section 9800 of the Welfare
38 and Institutions Code. The notice shall be accompanied by a copy
39 of the petition. The court may not shorten the time for giving the
40 notice of hearing under this section.

1 (b) Notice shall be mailed to the following persons:

2 (1) The spouse, if any, or domestic partner, if any, of the
3 proposed conservatee at the address stated in the petition.

4 (2) The relatives named in the petition at their addresses stated
5 in the petition.

6 (c) If notice is required by Section 1461 to be given to the
7 Director of Mental Health or the Director of Developmental
8 Services, notice shall be mailed as so required.

9 (d) If the petition states that the proposed conservatee is
10 receiving or is entitled to receive benefits from the Veterans
11 Administration, notice shall be mailed to the Office of the
12 Veterans Administration referred to in Section 1461.5.

13 (e) If the proposed conservatee is a person with developmental
14 disabilities, at least 30 days before the day of the hearing on the
15 petition, the petitioner shall mail a notice of the hearing and a
16 copy of the petition to the regional center identified in Section
17 1827.5.

18 (f) The Judicial Council shall, on or before July 1, 2007,
19 develop a form to effectuate the notice required in subdivision
20 (a).

21 ~~SEC. 13.~~

22 *SEC. 8.* Section 1826 of the Probate Code is amended to read:

23 1826. Regardless of whether the proposed conservatee
24 attends the hearing, the court investigator shall do all of the
25 following:

26 (a) Interview the proposed conservatee personally. The court
27 investigator also shall interview the proposed conservatee's
28 relatives within the first degree and, if known, close friends.

29 (b) Inform the proposed conservatee of the contents of the
30 citation, of the nature, purpose, and effect of the proceeding, and
31 of the right of the proposed conservatee to oppose the
32 proceeding, to attend the hearing, to have the matter of the
33 establishment of the conservatorship tried by jury, to be
34 represented by legal counsel if the proposed conservatee so
35 chooses, and to have legal counsel appointed by the court if
36 unable to retain legal counsel.

37 (c) Determine whether it appears that the proposed
38 conservatee is unable to attend the hearing and, if able to attend,
39 whether the proposed conservatee is willing to attend the hearing.

1 (d) Review the allegations of the petition as to why the
2 appointment of the conservator is required and, in making his or
3 her determination, do the following:

4 (1) Refer to the supplemental information form submitted by
5 the petitioner and consider the facts set forth in the form that
6 address each of the categories specified in paragraphs (1) to (5),
7 inclusive, of subdivision (a) of Section 1821.

8 (2) Consider, to the extent practicable, whether he or she
9 believes the proposed conservatee suffers from any of the mental
10 function deficits listed in subdivision (a) of Section 811 that
11 significantly impairs the proposed conservatee's ability to
12 understand and appreciate the consequences of his or her actions
13 in connection with any of the functions described in subdivision
14 (a) or (b) of Section 1801 and identify the observations that
15 support that belief.

16 (e) Determine whether the proposed conservatee wishes to
17 contest the establishment of the conservatorship.

18 (f) Determine whether the proposed conservatee objects to the
19 proposed conservator or prefers another person to act as
20 conservator.

21 (g) Determine whether the proposed conservatee wishes to be
22 represented by legal counsel and, if so, whether the proposed
23 conservatee has retained legal counsel and, if not, the name of an
24 attorney the proposed conservatee wishes to retain.

25 (h) Determine whether the proposed conservatee is capable of
26 completing an affidavit of voter registration.

27 (i) To the greatest extent possible, personally interview the
28 relatives of the proposed conservatee set forth in subdivision (b)
29 of Section 1821 before the hearing.

30 (j) If the proposed conservatee has not retained legal counsel,
31 determine whether the proposed conservatee desires the court to
32 appoint legal counsel.

33 (k) Determine whether the appointment of legal counsel would
34 be helpful to the resolution of the matter or is necessary to
35 protect the interests of the proposed conservatee in any case
36 where the proposed conservatee does not plan to retain legal
37 counsel and has not requested the appointment of legal counsel
38 by the court.

39 (l) Report to the court in writing, at least five days before the
40 hearing, concerning all of the foregoing, including the proposed

1 conservatee's express communications concerning both of the
2 following:

3 (1) Representation by legal counsel.

4 (2) Whether the proposed conservatee is not willing to attend
5 the hearing, does not wish to contest the establishment of the
6 conservatorship, and does not object to the proposed conservator
7 or prefer that another person act as conservator.

8 (m) Mail, at least five days before the hearing, a copy of the
9 report referred to in subdivision ~~(k)~~(l) to all of the following:

10 (1) The attorney, if any, for the petitioner.

11 (2) The attorney, if any, for the proposed conservatee.

12 (3) The proposed conservatee.

13 (4) The spouse, registered domestic partner, and relatives
14 within the first degree of the proposed conservatee who are
15 required to be named in the petition for appointment of the
16 conservator.

17 (5) Any other persons as the court orders.

18 (n) The court investigator has discretion to release the report
19 required by this section to the public conservator, interested
20 public agencies, and the long-term care ombudsman.

21 (o) The report required by this section is confidential and shall
22 be made available only to parties, persons given notice of the
23 petition who have requested this report or who have appeared in
24 the proceedings, their attorneys, and the court. The court has
25 discretion at any other time to release the report, if it would serve
26 the interests of the conservatee. The clerk of the court shall
27 provide for the limitation of the report exclusively to persons
28 entitled to its receipt.

29 (p) This section does not apply to a proposed conservatee who
30 has personally executed the petition for conservatorship, or one
31 who has nominated his or her own conservator, if he or she
32 attends the hearing.

33 (q) If the court investigator has performed an investigation
34 within the preceding six months and furnished a report thereon to
35 the court, the court may order, upon good cause shown, that
36 another investigation is not necessary or that a more limited
37 investigation may be performed.

38 (r) Any investigation by the court investigator related to a
39 temporary conservatorship also may be a part of the investigation
40 for the general petition for conservatorship, but the court

1 investigator shall make a second visit to the proposed
2 conservatee and the report required by this section shall include
3 the effect of the temporary conservatorship on the proposed
4 conservatee.

5 ~~SEC. 14.~~

6 *SEC. 9.* Section 1829 of the Probate Code is amended to read:

7 1829. (a) Any of the following persons may appear at the
8 hearing to support or oppose the petition:

9 (1) The proposed conservatee.

10 (2) The spouse or domestic partner of the proposed
11 conservatee.

12 (3) A relative of the proposed conservatee.

13 (4) Any interested person or friend of the proposed
14 conservatee.

15 (b) The court shall inform any of the persons set forth in (a)
16 who appear at the hearing about the free assistance provided to
17 court conservators pursuant to Section 1457.

18 ~~SEC. 15.~~

19 *SEC. 10.* Section 1830 of the Probate Code is amended to
20 read:

21 1830. (a) The order appointing the conservator shall contain,
22 among other things, the names, addresses, and telephone
23 numbers of:

24 (1) The conservator.

25 (2) The conservatee's attorney, if any.

26 (3) The court investigator, if any.

27 (b) In the case of a limited conservator for a developmentally
28 disabled adult, any order the court may make shall include the
29 findings of the court specified in Section 1828.5. The order shall
30 specify the powers granted to and duties imposed upon the
31 limited conservator, which powers and duties may not exceed the
32 powers and duties applicable to a conservator under this code.
33 The order shall also specify the following:

34 (1) The properties of the limited conservatee to which the
35 limited conservator is entitled to possession and management,
36 giving a description of the properties that will be sufficient to
37 identify them.

38 (2) The debts, rentals, wages, or other claims due to the
39 limited conservatee which the limited conservator is entitled to

1 collect, or file suit with respect to, if necessary, and thereafter to
2 possess and manage.

3 (3) The contractual or other obligations which the limited
4 conservator may incur on behalf of the limited conservatee.

5 (4) The claims against the limited conservatee which the
6 limited conservator may pay, compromise, or defend, if
7 necessary.

8 (5) Any other powers, limitations, or duties with respect to the
9 care of the limited conservatee or the management of the
10 property specified in this subdivision by the limited conservator
11 which the court shall specifically and expressly grant.

12 (c) An information notice of the rights of conservatees shall be
13 attached to the order. The conservator shall mail the order and
14 the attached information notice to the conservatee and the
15 conservatee's relatives, as set forth in subdivision (b) of Section
16 1821. By July 1, 2007, the Judicial Council shall develop the
17 notice required by this subdivision.

18 ~~SEC. 16.~~

19 *SEC. 11.* Section 1850 of the Probate Code is amended to
20 read:

21 1850. (a) Except as provided in subdivision (b), each
22 conservatorship initiated pursuant to this part shall be reviewed
23 by the court at a noticed hearing six months after the appointment
24 of the conservator and annually thereafter.

25 (b) Notice of the hearing shall be provided to all persons listed
26 in subdivision (b) of Section 1822.

27 (c) This chapter does not apply to either of the following:

28 (1) A conservatorship for an absentee as defined in Section
29 1403.

30 (2) A conservatorship of the estate for a nonresident of this
31 state where the conservatee is not present in this state.

32 ~~SEC. 17.~~

33 *SEC. 12.* Section 1851 of the Probate Code is amended to
34 read:

35 1851. (a) When court review is required, the court
36 investigator shall, without prior notice to the conservator, visit
37 the conservatee. The court investigator shall inform the
38 conservatee personally that the conservatee is under a
39 conservatorship and shall give the name of the conservator to the
40 conservatee. The court investigator shall determine whether the

1 conservatee wishes to petition the court for termination of the
2 conservatorship, whether the conservatee is still in need of the
3 conservatorship, whether the present conservator is acting in the
4 best interests of the conservatee, and whether the conservatee is
5 capable of completing an affidavit of voter registration. In
6 determining whether the conservator is acting in the best interest
7 of the conservatee, the court investigator's evaluation shall
8 include the appropriateness of the conservatee's placement,
9 quality of care, including physical and mental treatment, and the
10 conservatee's financial condition. To the greatest extent possible,
11 the court investigator shall interview the relatives of the
12 conservatee, as set forth in subdivision (b) of Section 1821, and
13 his or her neighbors or friends, in order to determine if the
14 conservator is acting in the best interest of the conservatee. If the
15 court has made an order under Chapter 4 (commencing with
16 Section 1870), the court investigator shall determine whether the
17 present condition of the conservatee is such that the terms of the
18 order should be modified or the order revoked.

19 (b) The findings of the court investigator, including the facts
20 upon which the findings are based, shall be certified in writing to
21 the court not less than 15 days prior to the date of review. A copy
22 of the report shall be mailed to the conservator and to the
23 attorneys of record for the conservator and conservatee at the
24 same time it is certified to the court.

25 (c) In the case of a limited conservatee, the court investigator
26 shall make a recommendation regarding the continuation or
27 termination of the limited conservatorship.

28 (d) The court investigator may personally visit the conservator
29 and other persons as may be necessary to determine whether the
30 present conservator is acting in the best interests of the
31 conservatee.

32 (e) The report required by this section shall be confidential and
33 shall be made available only to parties, persons given notice of
34 the petition who have requested the report or who have appeared
35 in the proceeding, their attorneys, and the court. The court shall
36 have discretion at any other time to release the report if it would
37 serve the interests of the conservatee. The clerk of the court shall
38 make provision for limiting disclosure of the report exclusively
39 to persons entitled thereto under this section.

1 ~~SEC. 18.~~

2 *SEC. 13.* Section 2113 is added to the Probate Code, to read:

3 2113. A conservator shall accommodate the desires of the
4 conservatee and facilitate the conservatee's involvement in
5 decisionmaking, except to the extent that doing so would violate
6 the conservator's fiduciary duties to the conservatee or impose an
7 unreasonable expense on the conservatorship estate. This
8 provision does not require the conservator to facilitate the
9 conservatee's involvement in a decision if that involvement
10 would be contrary to the conservatee's best interests, considering
11 the conservatee's mental or physical condition or other relevant
12 factors.

13 ~~SEC. 19.~~

14 *SEC. 14.* Section 2215 of the Probate Code is amended to
15 read:

16 2215. (a) Any of the following persons may appear at the
17 hearing to support or oppose the petition and may file written
18 objections to the petition:

19 (1) Any person required to be listed in the petition.

20 (2) Any creditor of the ward or conservatee or of the estate.

21 (3) Any other interested person.

22 (b) If the court determines that the transfer requested in the
23 petition will be for the best interests of the ward or conservatee,
24 it shall make an order transferring the proceeding to the other
25 county. If the ward or conservatee has moved to another county
26 within the state in which any person set forth in subdivision (b)
27 of Section 1821 also resides, the court shall make an order
28 transferring the proceeding to that county.

29 ~~SEC. 20.~~

30 *SEC. 15.* Section 2250 of the Probate Code is amended to
31 read:

32 2250. (a) On or after the filing of a petition for appointment
33 of a guardian or conservator, any person entitled to petition for
34 appointment of the guardian or conservator may file a petition for
35 appointment of:

36 (1) A temporary guardian of the person or estate or both.

37 (2) A temporary conservator of the person or estate or both.

38 (b) The petition shall state facts which establish good cause for
39 appointment of the temporary guardian or temporary conservator.

40 The court, upon that petition or other showing as it may require,

1 may appoint a temporary guardian of the person or estate or both,
2 or a temporary conservator of the person or estate or both, to
3 serve pending the final determination of the court upon the
4 petition for the appointment of the guardian or conservator.

5 (c) Unless the court for good cause otherwise orders, at least
6 five days before the hearing on the petition, notice of the hearing
7 shall be given as follows:

8 (1) Notice of the hearing shall be personally delivered to the
9 proposed ward if *he or she* is 12 years of age or older, to the
10 parent or parents of the proposed ward, and to any person having
11 a valid visitation order with the proposed ward that was effective
12 at the time of the filing of the petition. In a proceeding for
13 temporary guardianship of the person, evidence that a custodial
14 parent has died or become incapacitated, and that the petitioner is
15 the nominee of the custodial parent, may constitute good cause
16 for the court to order that this notice not be delivered.

17 (2) Notice of the hearing shall be personally delivered to the
18 proposed conservatee, and notice of the hearing shall be served
19 on the persons required to be named in the petition for
20 appointment of conservator.

21 (3) A copy of the petition for temporary appointment shall be
22 served with the notice of hearing.

23 (d) If a temporary guardianship is granted ex parte and the
24 hearing on the general guardianship petition is not to be held
25 within 30 days of the granting of the temporary guardianship, the
26 court shall set a hearing within 30 days to reconsider the
27 temporary guardianship. Notice of the hearing for
28 reconsideration of the temporary guardianship shall be provided
29 pursuant to Section 1511, except that the court may for good
30 cause shorten the time for the notice of the hearing.

31 (e) Visitation orders with the proposed ward granted prior to
32 the filing of a petition for temporary guardianship shall remain in
33 effect, unless for good cause the court orders otherwise.

34 (f) If a temporary conservatorship is granted ex parte, and a
35 petition to terminate the temporary conservatorship is filed more
36 than 15 days before the first hearing on the general petition for
37 appointment of conservator, the court shall set a hearing within
38 15 days of the filing of the petition for termination of the
39 temporary conservatorship to reconsider the temporary
40 conservatorship. Unless the court otherwise orders, notice of the

1 hearing on the petition to terminate the temporary
2 conservatorship shall be given at least 10 days prior to the
3 hearing.

4 (g) If the court suspends powers of the guardian or conservator
5 under Section 2334 or 2654 or under any other provision of this
6 division, the court may appoint a temporary guardian or
7 conservator to exercise those powers until the powers are
8 restored to the guardian or conservator or a new guardian or
9 conservator is appointed.

10 (h) If for any reason a vacancy occurs in the office of guardian
11 or conservator, the court, on a petition filed under subdivision (a)
12 or on its own motion, may appoint a temporary guardian or
13 conservator to exercise the powers of the guardian or conservator
14 until a new guardian or conservator is appointed.

15 (i) On or before July 1, 2007, the Judicial Council shall adopt
16 a rule of court that establishes uniform standards for good cause
17 exceptions to the notice required by subdivision (c), limiting
18 those exceptions to only cases when waiver of the notice is
19 essential to protect the proposed conservatee or ward, or the
20 estate of the proposed conservatee or ward, from irreparable
21 harm.

22 ~~SEC. 21.~~

23 *SEC. 16.* Section 2250.1 is added to the Probate Code, to
24 read:

25 2250.1. (a) The proposed temporary conservatee shall attend
26 the hearing except in the following cases:

27 (1) If the proposed temporary conservatee is out of the state
28 when served and is not the petitioner.

29 (2) If the proposed temporary conservatee is unable to attend
30 the hearing by reason of medical inability.

31 (3) If the court investigator has visited the proposed
32 conservatee prior to the hearing and the court investigator has
33 reported to the court that the proposed temporary conservatee has
34 expressly communicated that all of the following apply:

35 (A) The proposed conservatee is not willing to attend the
36 hearing.

37 (B) The proposed conservatee does not wish to contest the
38 establishment of the temporary conservatorship.

1 (C) The proposed conservatee does not object to the proposed
2 temporary conservator or prefer that another person act as
3 temporary conservator.

4 (4) If the court determines that the proposed conservatee
5 cannot attend the hearing, and holding the hearing in the absence
6 of the proposed conservatee is necessary to protect the
7 conservatee from imminent harm.

8 (b) Emotional or psychological instability is not good cause
9 for the absence of the proposed temporary conservatee from the
10 hearing unless, by reason of that instability, attendance at the
11 hearing is likely to cause serious and immediate physiological
12 damage to the proposed temporary conservatee.

13 ~~SEC. 22.~~

14 *SEC. 17.* Section 2250.2 is added to the Probate Code, to
15 read:

16 2250.2. (a) Regardless of whether the proposed temporary
17 conservatee attends the hearing, the court investigator shall do all
18 of the following prior to the hearing, or, if not feasible before the
19 hearing, in no event later than 48 hours after the hearing:

20 (1) Interview the proposed conservatee personally.

21 (2) Inform the proposed conservatee of the contents of the
22 citation, of the nature, purpose, and effect of the proceeding, and
23 of the right of the proposed conservatee to oppose the
24 proceeding, to attend the hearing, to have the matter of the
25 establishment of the conservatorship tried by jury, to be
26 represented by legal counsel if the proposed conservatee so
27 chooses, and to have legal counsel appointed by the court if
28 unable to retain legal counsel.

29 (3) Determine whether it appears that the proposed
30 conservatee is unable to attend the hearing and, if able to attend,
31 whether the proposed conservatee is willing to attend the hearing.

32 (4) Determine whether the proposed conservatee wishes to
33 contest the establishment of the conservatorships.

34 (5) Determine whether the proposed conservatee objects to the
35 proposed conservator or prefers another person to act as
36 conservator.

37 (6) Report to the court, in writing, concerning all of the
38 foregoing.

39 (b) If the investigator does not visit the conservatee until after
40 the hearing at which a conservator was appointed, and the

1 conservatee objects to the appointment of the temporary
2 conservator, the court shall set the matter for an expedited
3 hearing within 10 days of the investigator's visit.

4 ~~SEC. 23.~~

5 *SEC. 18.* Section 2250.5 is added to the Probate Code, to
6 read:

7 2250.5. When a temporary conservatorship is granted, the
8 court investigator shall comply with the requirements of
9 subdivisions (a) and (b) of Section 1826. If it appears to the court
10 investigator that the temporary conservatorship is inappropriate,
11 the court investigator shall immediately provide a written report
12 to the court so the court can consider taking appropriate action on
13 its own motion. If the temporary conservatee informs the court
14 investigator that the temporary conservatee objects to the
15 proceeding, or requests an attorney, the court investigator shall
16 report this information promptly to the court. Upon receipt of that
17 information, the court may proceed with *the* appointment of an
18 attorney as provided in Chapter 4 (commencing with Section
19 1470) of Part 1.

20 ~~SEC. 24.~~

21 *SEC. 19.* Section 2253 of the Probate Code is amended to
22 read:

23 2253. (a) If a temporary conservator of the person proposes
24 to fix the residence of the conservatee at a place other than that
25 where the conservatee resided prior to the commencement of the
26 proceedings, that power shall be requested of the court in writing,
27 unless the change of residence is required of the conservatee by a
28 prior court order. The request shall be filed with the petition for
29 temporary conservatorship or, if a temporary conservatorship has
30 already been established, separately. The request shall specify in
31 particular the place to which the temporary conservator proposes
32 to move the conservatee, and the precise reasons why it is
33 believed that the conservatee will suffer irreparable harm if the
34 change of residence is not permitted, and why no means less
35 restrictive of the conservatee's liberty will suffice to prevent that
36 harm.

37 (b) Unless the court for good cause orders otherwise, the court
38 investigator shall do all of the following:

39 (1) Interview the conservatee personally.

1 (2) Inform the conservatee of the nature, purpose, and effect of
2 the request made under subdivision (a), and of the right of the
3 conservatee to oppose the request, attend the hearing, be
4 represented by legal counsel if the conservatee so chooses, and to
5 have legal counsel appointed by the court if unable to obtain
6 legal counsel.

7 (3) Determine whether the conservatee is unable to attend the
8 hearing because of medical inability and, if able to attend,
9 whether the conservatee is willing to attend the hearing.

10 (4) Determine whether the conservatee wishes to oppose the
11 request.

12 (5) Determine whether the conservatee wishes to be
13 represented by legal counsel at the hearing and, if so, whether the
14 conservatee has retained legal counsel and, if not, the name of an
15 attorney the proposed conservatee wishes to retain or whether the
16 conservatee desires the court to appoint legal counsel.

17 (6) If the conservatee does not plan to retain legal counsel and
18 has not requested the appointment of legal counsel by the court,
19 determine whether the appointment of legal counsel would be
20 helpful to the resolution of the matter or is necessary to protect
21 the interests of the conservatee.

22 (7) Determine whether the proposed change of place of
23 residence is required to prevent irreparable harm to the
24 conservatee and whether no means less restrictive of the
25 conservatee's liberty will suffice to prevent that harm.

26 (8) Report to the court in writing, at least two days before the
27 hearing, concerning all of the foregoing, including the
28 conservatee's express communications concerning representation
29 by legal counsel and whether the conservatee is not willing to
30 attend the hearing and does not wish to oppose the request.

31 (c) Within seven days of the date of filing of a temporary
32 conservator's request to remove the conservatee from his or her
33 previous place of residence, the court shall hold a hearing on the
34 request.

35 (d) The conservatee shall be present at the hearing except in
36 the following cases:

37 (1) Where the conservatee is unable to attend the hearing by
38 reason of medical inability. Emotional or psychological
39 instability is not good cause for the absence of the conservatee
40 from the hearing unless, by reason of that instability, attendance

1 at the hearing is likely to cause serious and immediate
2 physiological damage to the conservatee.

3 (2) Where the court investigator has reported to the court that
4 the conservatee has expressly communicated that the conservatee
5 is not willing to attend the hearing and does not wish to oppose
6 the request, and the court makes an order that the conservatee
7 need not attend the hearing.

8 (e) If the conservatee is unable to attend the hearing because
9 of medical inability, that inability shall be established (1) by the
10 affidavit or certificate of a licensed medical practitioner or (2) if
11 the conservatee is an adherent of a religion whose tenets and
12 practices call for reliance on prayer alone for healing and is under
13 treatment by an accredited practitioner of that religion, by the
14 affidavit of the practitioner. The affidavit or certificate is
15 evidence only of the conservatee's inability to attend the hearing
16 and shall not be considered in determining the issue of need for
17 the establishment of a conservatorship.

18 (f) At the hearing, the conservatee has the right to be
19 represented by counsel and the right to confront and
20 cross-examine any witness presented by or on behalf of the
21 temporary conservator and to present evidence on his or her own
22 behalf.

23 (g) The court may approve the request to remove the
24 conservatee from the previous place of residence only if the court
25 finds (1) that change of residence is required to prevent
26 irreparable harm to the conservatee and (2) that no means less
27 restrictive of the conservatee's liberty will suffice to prevent that
28 harm. If an order is made authorizing the temporary conservator
29 to remove the conservatee from the previous place of residence,
30 the order shall specify the specific place wherein the temporary
31 conservator is authorized to place the conservatee. The temporary
32 conservator may not be authorized to remove the conservatee
33 from this state unless it is additionally shown that such removal
34 is required to permit the performance of specified nonpsychiatric
35 medical treatment, consented to by the conservatee, which is
36 essential to the conservatee's physical survival. A temporary
37 conservator who willfully removes a temporary conservatee from
38 this state without authorization of the court is guilty of a felony.

39 (h) Subject to subdivision (e) of Section 2252, the court shall
40 also order the temporary conservator to take all reasonable steps

1 to preserve the status quo concerning the conservatee's previous
2 place of residence.

3 ~~SEC. 25.~~

4 *SEC. 20.* Section 2320 of the Probate Code is amended to
5 read:

6 2320. (a) Except as otherwise provided by statute, every
7 person appointed as guardian or conservator shall, before letters
8 are issued, give a bond approved by the court.

9 (b) The bond shall be for the benefit of the ward or
10 conservatee and all persons interested in the guardianship or
11 conservatorship estate and shall be conditioned upon the faithful
12 execution of the duties of the office, according to law, by the
13 guardian or conservator.

14 (c) Except as otherwise provided by statute, unless the court
15 increases or decreases the amount upon a showing of good cause,
16 the amount of a bond given by an admitted surety insurer shall be
17 the sum of all of the following:

18 (1) The value of the personal property of the estate.

19 (2) The probable annual gross income of all of the property of
20 the estate.

21 (3) The sum of the probable annual gross payments from the
22 following:

23 (A) Part 3 (commencing with Section 11000) of, Part 4
24 (commencing with Section 16000) of, or Part 5 (commencing
25 with Section 17000) of, Division 9 of the Welfare and
26 Institutions Code.

27 (B) Subchapter II (commencing with Section 401) of, or Part
28 A of Subchapter XVI (commencing with Section 1382) of,
29 Chapter 7 of Title 42 of the United States Code.

30 (C) Any other public entitlements of the ward or conservatee.

31 (4) The cost of recovery to collect on the bond, including
32 attorney's fees and costs.

33 (d) If the bond is given by personal sureties, the amount of the
34 bond shall be twice the amount required for a bond given by an
35 admitted surety insurer.

36 (e) The Bond and Undertaking Law (Chapter 2 (commencing
37 with Section 995.010) of Title 14 of Part 2 of the Code of Civil
38 Procedure) applies to a bond given under this article, except to
39 the extent inconsistent with this article.

1 ~~SEC. 26.~~

2 *SEC. 21.* Section 2321 of the Probate Code is amended to
3 read:

4 2321. (a) Notwithstanding any other provision of law, the
5 court in a conservatorship proceeding may not waive the filing of
6 a bond or reduce the amount of bond required, without a good
7 cause determination by the court which shall include a
8 determination by the court that the conservatee will not suffer
9 harm as a result of the waiver or reduction of the bond. Good
10 cause may not be established merely by the conservator having
11 filed a bond in another or prior proceeding.

12 (b) In a conservatorship proceeding, where the conservatee,
13 having sufficient capacity to do so, has waived the filing of a
14 bond, the court in its discretion may permit the filing of a bond in
15 an amount less than would otherwise be required under Section
16 2320.

17 ~~SEC. 27.~~

18 *SEC. 22.* Section 2340 of the Probate Code is amended to
19 read:

20 2340. (a) A superior court shall not appoint a professional
21 conservator or guardian or permit any person to serve as a
22 professional conservator or guardian pursuant to Chapter 5
23 (commencing with Section 2350) or Chapter 6 (commencing
24 with Section 2400), unless the professional conservator or
25 guardian is licensed by the Department of Consumer Affairs
26 pursuant to Chapter 6 (commencing with Section 6500) of
27 Division 3 of the Business and Professions Code. If a conservator
28 or guardian is exempted from licensure requirements under that
29 chapter, the court may appoint that person to serve as a
30 conservator or guardian without a professional conservator or
31 guardian license by the Department of Consumer Affairs.

32 (b) No superior court may appoint a private professional
33 trustee unless the trustee has filed the information required by
34 Sections 2342 and 2343 with the clerk of the court in each county
35 where a petition for appointment has been filed.

36 ~~SEC. 28.~~

37 *SEC. 23.* Section 2342 of the Probate Code is amended to
38 read:

1 2342. (a) All private professional trustees shall file annually
2 with the clerk of the court a statement, under penalty of perjury,
3 containing the following information:

4 (1) His or her educational background and professional
5 experience.

6 (2) At least three professional references.

7 (3) The aggregate dollar value of all assets currently under the
8 trustee's supervision.

9 (4) The trustee's addresses and telephone numbers for his or
10 her place of business and place of residence.

11 (5) Whether the trustee has ever been removed for cause as
12 trustee or has resigned as trustee in a specific case, the
13 circumstances causing that removal or resignation, and the case
14 names, court locations, and case numbers.

15 (6) The case names, court locations, and case numbers of all
16 trust cases which are closed for which the private professional
17 trustee served as the trustee.

18 (b) Upon filing of a petition for appointment, a private
19 professional trustee shall state that he or she is a private
20 professional trustee, and that the information required by this
21 section is on file with the clerk of the court.

22 (c) The clerk of the court shall order a background fingerprint
23 check from the Department of Justice and may request a
24 background fingerprint check from the Federal Bureau of
25 Investigation on each private professional trustee. The
26 background check shall include a record of all arrests resulting in
27 conviction and all arrests for which final disposition is pending.
28 The Department of Justice shall retain these fingerprints in its
29 files and shall provide any subsequent arrest information to the
30 clerk of the court pursuant to Section 11105.2 of the Penal Code
31 until notified by the clerk of the court that the person is no longer
32 serving in the capacity of a private professional trustee. The
33 superior court shall review the background fingerprint check
34 prior to the appointment of a private professional trustee. The
35 court shall review annual updates to the criminal background
36 check on persons currently serving in the capacity of a private
37 professional trustee under the court's jurisdiction. The
38 background fingerprint check may be dispensed with by the court
39 if the petitioner was appointed as a private professional trustee,
40 or served in the capacity of a private professional trustee, during

1 the previous year and a background fingerprint check was
2 previously made.

3 (d) The information required by this section shall be made
4 available to the court for any purpose, including the
5 determination of the appropriateness of appointing or continuing
6 the appointment of, or removing, the trustee, but shall otherwise
7 be kept confidential.

8 (e) This section applies to all private professional trustees
9 regardless of the date of appointment.

10 ~~SEC. 29.~~

11 ~~SEC. 24.~~ Section 2342.5 of the Probate Code is repealed.

12 ~~SEC. 30.~~

13 ~~SEC. 25.~~ Section 2343 of the Probate Code is amended to
14 read:

15 2343. The clerk of the court shall charge each private
16 professional trustee an annual filing fee that does not exceed the
17 average trustee annual cost in complying with this article. This
18 fee shall also include the cost of submitting the fingerprint card
19 to the Department of Justice. This fee shall be distributed to the
20 court in which it was collected.

21 ~~SEC. 31.~~

22 ~~SEC. 26.~~ Section 2344 of the Probate Code is repealed.

23 ~~SEC. 32.~~

24 ~~SEC. 27.~~ Section 2401 of the Probate Code is amended to
25 read:

26 2401. (a) The guardian or conservator, or limited conservator
27 to the extent specifically and expressly provided in the
28 appointing court's order, has the management and control of the
29 estate and, in managing and controlling the estate, shall use
30 ordinary care and diligence. What constitutes use of ordinary
31 care and diligence is determined by all the circumstances of the
32 particular estate.

33 (b) The guardian or conservator:

34 (1) Shall exercise a power to the extent that ordinary care and
35 diligence requires that the power be exercised.

36 (2) Shall not exercise a power to the extent that ordinary care
37 and diligence requires that the power not be exercised.

38 (c) Notwithstanding any other law, the guardian or
39 conservator, in exercising his or her powers, may not hire or refer
40 any business to an entity in which he or she has a financial

1 interest except upon authorization of the court. Prior to
2 authorization from the court, the guardian or conservator shall
3 disclose to the court in writing his or her financial interest in the
4 entity. For the purposes of this subdivision, “financial interest”
5 shall mean (1) an ownership interest in a sole proprietorship, a
6 partnership, or a closely held corporation, or (2) an ownership
7 interest of greater than 1 percent of the outstanding shares in a
8 publicly held corporation, or (3) being an officer or a director of
9 a corporation.

10 ~~SEC. 33.~~

11 *SEC. 28.* Section 2410 is added to the Probate Code, to read:

12 2410. On or before July 1, 2007, the Judicial Council, in
13 consultation with the California Judges Association, the
14 California Association of Superior Court Investigators, the
15 California State Association of Public Administrators, Public
16 Guardians, and Public Conservators, the California Bar
17 Association, the National Guardianship Association, and the
18 Association of Professional Geriatric Care Managers, shall adopt
19 a rule of court that shall require uniform standards of conduct for
20 actions that conservators and guardians may take under this
21 chapter on behalf of conservatees and wards to ensure that the
22 estate of conservatees or wards are maintained and conserved as
23 appropriate and to prevent risk of loss or harm to the
24 conservatees or wards. This rule shall include at a minimum
25 standards for determining the fees that may be charged to
26 conservatees or wards and standards for asset management.

27 ~~SEC. 34.~~

28 *SEC. 29.* Section 2610 of the Probate Code is amended to
29 read:

30 2610. (a) Within 90 days after appointment, or within any
31 further time as the court for reasonable cause upon ex parte
32 petition of the guardian or conservator may allow, the guardian
33 or conservator shall file with the clerk of the court and mail to the
34 conservatee and the conservatee’s relatives, as set forth in
35 subdivision (b) of Section 1821, along with notice of how to
36 contest, an inventory and appraisal of the estate, made as of the
37 date of the appointment of the guardian or conservator.

38 (b) The guardian or conservator shall take and subscribe to an
39 oath that the inventory contains a true statement of all of the
40 estate of the ward or conservatee of which the guardian or

1 conservator has possession or knowledge. The oath shall be
2 endorsed upon or annexed to the inventory.

3 (c) The property described in the inventory shall be appraised
4 in the manner provided for the inventory and appraisal of estates
5 of decedents. The guardian or conservator may appraise the
6 assets that a personal representative could appraise under Section
7 8901.

8 (d) If a conservatorship is initiated pursuant to the
9 Lanterman-Petris-Short Act (Part 1 (commencing with Section
10 5000) of Division 5 of the Welfare and Institutions Code), and no
11 sale of the estate will occur:

12 (1) The inventory and appraisal required by subdivision (a)
13 shall be filed within 90 days after appointment of the
14 conservator.

15 (2) The property described in the inventory may be appraised
16 by the conservator and need not be appraised by a probate
17 referee.

18 (e) By July 1, 2007, the Judicial Council shall develop a form
19 to effectuate the notice required in subdivision (a).

20 ~~SEC. 35.~~

21 *SEC. 30.* Section 2620 of the Probate Code is amended to
22 read:

23 2620. (a) At the expiration of six months from the time of
24 appointment and thereafter not less frequently than annually,
25 unless otherwise ordered by the court to be more frequent, the
26 guardian or conservator shall present the accounting of the assets
27 of the estate of the ward or conservatee to the court for settlement
28 and allowance in the manner provided in Chapter 4 (commencing
29 with Section 1060) of Part 1 of Division 3. By July 1, 2007, the
30 Judicial Council, in consultation with the California Judges
31 Association, the California Association of Superior Court
32 Investigators, the California State Association of Public
33 Administrators, Public Guardians, and Public Conservators, the
34 California Bar Association, and the California Society of
35 Certified Public Accountants, shall develop a standard
36 accounting form, a simplified accounting form, and rules for
37 when the simplified accounting form may be used. After July 1,
38 2007, all accountings submitted pursuant to this section shall be
39 submitted on the Judicial Council form.

1 (b) The final court accounting of the guardian or conservator
2 following the death of the ward or conservatee shall include a
3 court accounting for the period that ended on the date of death
4 and a separate accounting for the period subsequent to the date of
5 death.

6 (c) Along with each court accounting, the guardian or
7 conservator shall file all supporting documents for all charges,
8 including, for all disbursing accounts, all original account
9 statements from any institution, as defined in Section 2890, or
10 any financial institution, as defined in Section 2892, and for all
11 nondisbursing accounts, the first and last original account
12 statement from any institution, as defined in Section 2890, or any
13 financial institution, as defined in Section 2892, for the period of
14 the accounting, in which moneys or other assets of the estate are
15 held or deposited, showing the balance through the period of the
16 court accounting. If the court accounting is the first court
17 accounting of the guardianship or conservatorship, the guardian
18 or conservator shall provide to the court the account statement
19 for the account balance immediately preceding the date the
20 conservator or guardian was appointed and the account statement
21 or statements for the account throughout the accounting period
22 until the closing date of the first court accounting. This
23 subdivision shall not apply to the public guardian if the money
24 belonging to the estate ~~is~~ *are* pooled with money belonging to
25 other estates pursuant to Section 2940 and Article 3
26 (commencing with Section 7640) of Chapter 4 of Part 1 of
27 Division 7. Nothing in this section shall affect any other duty or
28 responsibility of the public guardian with regard to managing
29 money belonging to the estate or filing accountings with the
30 court.

31 (d) If any document to be filed with the court under this
32 section contains the ward's or conservatee's social security
33 number or any other personal information regarding the ward or
34 conservatee that would not ordinarily be disclosed in a court
35 accounting, an inventory and appraisal, or other nonconfidential
36 pleadings filed in the action, the account statement shall be
37 attached to a separate affidavit describing the character of the
38 document in proper form for filing, captioned "CONFIDENTIAL
39 FINANCIAL STATEMENT" in capital letters. Except as
40 otherwise ordered by the court, the clerk of the court shall keep

1 the document confidential except to the court and subject to
2 disclosure only upon an order of the court.

3 (e) Each accounting is subject to random and full review and
4 verification by the court. Each accounting that the court
5 determines may not be accurate shall be subject to a full review
6 and verification. The review and verification shall include a
7 review of all documents necessary to determine the accuracy of
8 the accounting. If the review and verification reveals any
9 material error, the court shall immediately do one of the
10 following:

11 (1) Remove the conservator or guardian as provided under
12 Chapter 9 (commencing with Section 2650).

13 (2) Hold a hearing to determine the severity of the error and
14 whether the conservator or guardian should be removed as
15 provided under Chapter 9 (commencing with Section 2650).

16 (3) Make a finding that the error was harmless.

17 ~~SEC. 36.~~

18 *SEC. 31.* Section 2620.2 of the Probate Code is amended to
19 read:

20 2620.2. (a) Whenever the conservator or guardian has failed
21 to file an accounting as required by Section 2620, the court shall
22 require that written notice be given to the conservator or guardian
23 and the attorney of record for the conservatorship or guardianship
24 directing the conservator or guardian to file an accounting and to
25 set the accounting for hearing before the court within 30 days of
26 the date of the notice or, if the conservator or guardian is a public
27 agency, within 45 days of the date of the notice.

28 (b) Failure to file the accounting within the time specified
29 under subdivision (a), or within 45 days of actual receipt of the
30 notice, whichever is later, shall constitute a contempt of the
31 authority of the court as described in Section 1209 of the Code of
32 Civil Procedure.

33 (c) If the conservator or guardian does not file an accounting
34 with all appropriate supporting documentation and set the
35 accounting for hearing as required by Section 2620, the court
36 shall do one or more of the following and shall report that action
37 to the board established pursuant to Section ~~6504~~ 6510 of the
38 Business and Professions Code:

1 (1) Remove the conservator or guardian as provided under
2 Article 1 (commencing with Section 2650) of Chapter 9 of Part 4
3 of Division 4.

4 (2) Issue and serve a citation requiring a guardian or
5 conservator who does not file a required accounting to appear
6 and show cause why the guardian or conservator should not be
7 punished for contempt. If the guardian or conservator purposely
8 evades personal service of the citation, the guardian or
9 conservator shall be immediately removed from office.

10 (3) Suspend the powers of the conservator or guardian and
11 appoint a temporary conservator or guardian, who shall take
12 possession of the assets of the conservatorship or guardianship,
13 investigate the actions of the conservator or guardian, and
14 petition for surcharge if this is in the best interest of the ward or
15 conservatee. Compensation for the temporary conservator or
16 guardian, and counsel for the temporary conservator or guardian,
17 shall be treated as a surcharge against the conservator or
18 guardian, and if unpaid shall be considered a breach of condition
19 of the bond.

20 (4) If the conservator or guardian is exempt from the licensure
21 requirements of Chapter 6 (commencing with Section 6500) of
22 Division 3 of the Business and Professions Code, upon ex parte
23 application or any notice as the court may require, extend the
24 time to file the accounting, not to exceed an additional 30 days
25 after the expiration of the deadline described in subdivision (a),
26 where the court finds there is good cause and that the estate is
27 adequately bonded. After expiration of any extensions, if the
28 accounting has not been filed, the court shall take action as
29 described in paragraphs (1) to (3), inclusive.

30 (d) Subdivision (c) does not preclude the court from
31 additionally taking any other appropriate action in response to a
32 failure to file a proper accounting in a timely manner.

33 ~~SEC. 37.~~

34 *SEC. 32.* Section 2623 of the Probate Code is amended to
35 read:

36 2623. (a) Except as provided in subdivision (b) of this
37 section, the guardian or conservator shall be allowed all of the
38 following:

39 (1) The amount of the reasonable expenses incurred in the
40 exercise of the powers and the performance of the duties of the

1 guardian or conservator (including, but not limited to, the cost of
2 any surety bond furnished, reasonable attorney's fees, and such
3 compensation for services rendered by the guardian or
4 conservator of the person as the court determines is just and
5 reasonable).

6 (2) Such compensation for services rendered by the guardian
7 or conservator as the court determines is just and reasonable.

8 (3) All reasonable disbursements made before appointment as
9 guardian or conservator.

10 (4) In the case of termination other than by the death of the
11 ward or conservatee, all reasonable disbursements made after the
12 termination of the guardianship or conservatorship but prior to
13 the discharge of the guardian or conservator by the court.

14 (5) In the case of termination by the death of the ward or
15 conservatee, all reasonable expenses incurred prior to the
16 discharge of the guardian or conservator by the court for the
17 custody and conservation of the estate and its delivery to the
18 personal representative of the estate of the deceased ward or
19 conservatee or in making other disposition of the estate as
20 provided for by law.

21 (b) The guardian or conservator shall not be compensated
22 from the estate for any costs or fees that the guardian or
23 conservator incurred in unsuccessfully opposing a petition, or
24 other request or action, made by or on behalf of the ward or
25 conservatee, unless the court determines that the opposition was
26 made in good faith, based on the best interests of the ward or
27 conservatee.

28 ~~SEC. 38.~~

29 *SEC. 33.* Section 2640 of the Probate Code is amended to
30 read:

31 2640. (a) At any time after the filing of the inventory and
32 appraisal, but not before the expiration of 90 days from the
33 issuance of letters or any other period of time as the court for
34 good cause orders, the guardian or conservator of the estate may
35 petition the court for an order fixing and allowing compensation
36 to any one or more of the following:

37 (1) The guardian or conservator of the estate for services
38 rendered to that time.

39 (2) The guardian or conservator of the person for services
40 rendered to that time.

1 (3) The attorney for services rendered to that time by the
2 attorney to the guardian or conservator of the person or estate or
3 both.

4 (b) Notice of the hearing shall be given for the period and in
5 the manner provided for in Chapter 3 (commencing with Section
6 1460) of Part 1.

7 (c) Upon the hearing, the court shall make an order allowing
8 (1) any compensation requested in the petition the court
9 determines is just and reasonable to the guardian or conservator
10 of the estate for services rendered or to the guardian or
11 conservator of the person for services rendered, or to both, and
12 (2) any compensation requested in the petition the court
13 determines is reasonable to the attorney for services rendered to
14 the guardian or conservator of the person or estate or both. The
15 compensation allowed to the guardian or conservator of the
16 person, the guardian or conservator of the estate, and to the
17 attorney may, in the discretion of the court, include compensation
18 for services rendered before the date of the order appointing the
19 guardian or conservator. The compensation allowed shall
20 thereupon be charged to the estate. Legal services for which the
21 attorney may be compensated include those services rendered by
22 any paralegal performing legal services under the direction and
23 supervision of an attorney. The petition or application for
24 compensation shall set forth the hours spent and services
25 performed by the paralegal.

26 (d) Notwithstanding the provisions of subdivision (c), the
27 guardian or conservator shall not be compensated from the estate
28 for any costs or fees that the guardian or conservator incurred in
29 unsuccessfully opposing a petition, or other request or action,
30 made by or on behalf of the ward or conservatee, unless the court
31 determines that the opposition was made in good faith, based on
32 the best interests of the ward or conservatee.

33 ~~SEC. 39.~~

34 *SEC. 34.* Section 2640.1 of the Probate Code is amended to
35 read:

36 2640.1. (a) If a person has petitioned for the appointment of
37 a particular conservator and another conservator was appointed
38 while the petition was pending, but not before the expiration of
39 90 days from the issuance of letters, the person who petitioned
40 for the appointment of a conservator but was not appointed and

1 that person's attorney may petition the court for an order fixing
2 and allowing compensation and reimbursement of costs,
3 provided that the court determines that the petition was filed in
4 the best interest of the conservatee.

5 (b) Notice of the hearing shall be given for the period and in
6 the manner provided in Chapter 3 (commencing with Section
7 1460) of Part 1.

8 (c) Upon the hearing, the court shall make an order to allow
9 both of the following:

10 (1) Any compensation or costs requested in the petition the
11 court determines is just and reasonable to the person who
12 petitioned for the appointment of a conservator but was not
13 appointed, for his or her services rendered in connection with and
14 to facilitate the appointment of a conservator, and costs incurred
15 in connection therewith.

16 (2) Any compensation or costs requested in the petition the
17 court determines is just and reasonable to the attorney for that
18 person, for his or her services rendered in connection with and to
19 facilitate the appointment of a conservator, and costs incurred in
20 connection therewith.

21 Any compensation and costs allowed shall be charged to the
22 estate of the conservatee. If a conservator of the estate is not
23 appointed, but a conservator of the person is appointed, the
24 compensation and costs allowed shall be ordered by the court to
25 be paid from property belonging to the conservatee, whether held
26 outright, in trust, or otherwise.

27 (d) It is the intent of the Legislature for this section to have
28 retroactive effect.

29 ~~SEC. 40.~~

30 *SEC. 35.* Section 2641 of the Probate Code is amended to
31 read:

32 2641. (a) At any time permitted by Section 2640 and upon
33 the notice therein prescribed, the guardian or conservator of the
34 person may petition the court for an order fixing and allowing
35 compensation for services rendered to that time.

36 (b) Upon the hearing, the court shall make an order allowing
37 any compensation the court determines is just and reasonable to
38 the guardian or conservator of the person for services rendered.
39 The compensation allowed to the guardian or conservator of the
40 person may, in the discretion of the court, include compensation

1 for services rendered before the date of the order appointing the
2 guardian or conservator. The compensation allowed shall
3 thereupon be charged against the estate.

4 (c) The guardian or conservator shall not be compensated from
5 the estate for any costs or fees that the guardian or conservator
6 incurred in unsuccessfully opposing a petition, or other request or
7 action, made by or on behalf of the ward or conservatee, unless
8 the court determines that the opposition was made in good faith,
9 based on the best interests of the ward or conservatee.

10 ~~SEC. 41.~~

11 *SEC. 36.* Section 2653 of the Probate Code is amended to
12 read:

13 2653. (a) The guardian or conservator, the ward or
14 conservatee, the spouse of the ward or the spouse or domestic
15 partner of the conservatee, any relative or friend of the ward or
16 conservatee, and any interested person may appear at the hearing
17 and support or oppose the petition.

18 (b) If the court determines that cause for removal of the
19 guardian or conservator exists, the court may remove the
20 guardian or conservator, revoke the letters of guardianship or
21 conservatorship, and enter judgment accordingly and, in the case
22 of a guardianship or conservatorship of the estate, order the
23 guardian or conservator to file an accounting and to surrender the
24 estate to the person legally entitled thereto. If the guardian or
25 conservator fails to file the accounting as ordered, the court may
26 compel the accounting pursuant to Section 2620.2.

27 (c) If the court removes the guardian or conservator for cause,
28 as described in subdivisions (a) to (g), inclusive, of Section 2650
29 or Section 2655, both of the following shall apply:

30 (1) The court shall award the petitioner the costs of the
31 petition and other expenses and costs of litigation, including
32 attorney's fees, incurred under this article.

33 (2) The guardian or conservator may not deduct from, or
34 charge to, the estate his or her costs of litigation, and is
35 personally liable for those costs and expenses.

36 ~~SEC. 42.~~

37 *SEC. 37.* Section 2701 of the Probate Code is amended to
38 read:

1 2701. (a) A request for special notice may be modified or
2 withdrawn in the same manner as provided for the making of the
3 initial request.

4 (b) A new request for special notice may be served and filed at
5 any time as provided in the case of an initial request.

6 ~~SEC. 43.~~

7 *SEC. 38.* Section 2850 of the Probate Code is amended to
8 read:

9 2850. (a) (1) The Department of Consumer Affairs shall
10 maintain a Statewide Registry and shall make all information in
11 the registry available to the court for any purpose, but shall
12 otherwise keep this information confidential, except as provided
13 in this section.

14 (2) (A) On request, the registry shall disclose to the public the
15 following:

16 (i) Whether an individual is or is not registered with the
17 Statewide Registry.

18 (ii) Whether the Statewide Registry contains any information
19 filed pursuant to subdivision (d) for a specific individual
20 regarding his or her duties as a trustee.

21 (iii) The educational background and professional experience
22 of an individual registered with the Statewide Registry.

23 (B) Upon written request by a member of the public, the
24 registry shall provide access to any information filed with the
25 registry pursuant to subdivision (d) regarding a trustee.

26 (3) Except as otherwise provided in Section 2854, all persons
27 who wish to serve as a trustee or who are currently serving as a
28 trustee shall register with the Statewide Registry and shall
29 reregister every three years thereafter. "Registration" means the
30 filing of a declaration pursuant to subdivision (b).

31 (b) All trustees required to file information with the clerk of
32 the court pursuant to Section 2340 or required to register
33 pursuant to this chapter shall file a signed declaration with the
34 Statewide Registry. A person who signs a declaration pursuant to
35 this subdivision asserting the truth of any material matter which
36 he or she knows to be false is guilty of a misdemeanor
37 punishable by imprisonment for up to one year in a county jail, or
38 a fine of not more than two thousand dollars (\$2,000), or *by* both
39 that fine and imprisonment. The declaration shall contain the
40 following information:

1 (1) Full name.

2 (2) Professional name, if different from paragraph (1).

3 (3) Business address.

4 (4) Business telephone number or numbers.

5 (5) His or her educational background and professional
6 experience, including verification of any college or graduate
7 degree claimed.

8 (6) The names of the current trusts administered by the trustee.

9 (7) The aggregate dollar value of all assets currently under the
10 trustee's supervision.

11 (8) Whether he or she has ever been removed for cause or
12 resigned as trustee in a specific case, the circumstances of that
13 removal or resignation, and the case names, court locations, and
14 case numbers.

15 (c) The Department of Consumer Affairs may charge a
16 reasonable fee to persons registering and reregistering with the
17 Statewide Registry for the cost of that registration. The
18 Department of Consumer Affairs shall issue a certificate of
19 registration to each registrant.

20 (d) If a court makes a finding that a trustee has not properly
21 performed the duties of a trustee, and that finding results in an
22 order for a surcharge for other than nominal damages or for
23 removal of the trustee, the court clerk shall forward a copy of the
24 court's findings and order to the Statewide Registry, which shall
25 include this information in the file of that trustee.

26 ~~SEC. 44.~~

27 *SEC. 39.* Section 2851 of the Probate Code is amended to
28 read:

29 2851. (a) A court may not appoint a person as a trustee
30 unless that person, if required to register under Section 2850, is
31 registered with the Statewide Registry.

32 (b) A trustee required to register under Section 2850 who has
33 not registered with the Statewide Registry on or before January 1,
34 2005, shall be removed as a trustee by the court, unless the court
35 finds reasonable grounds not to do so. If the court finds
36 reasonable grounds exist for not removing the trustee for failing
37 to register on or before January 1, 2005, the court shall order the
38 trustee to register with the Statewide Registry within 90 days of
39 the court's order and shall remove the trustee if the trustee has
40 failed to register at the end of the 90-day period.

(c) In appointing, continuing the appointment, or removing a person as trustee, the court shall examine and consider the information contained in the Statewide Registry for that person. The information contained in the Statewide Registry shall be made available to the court for this purpose, but shall otherwise be kept confidential, except as provided by law.

~~SEC. 45.~~

SEC. 40. Section 2852 of the Probate Code is amended to read:

2852. (a) Any person required to register under Section 2850 who serves as a trustee without being registered with the Statewide Registry, who commits fraud in registering, who falsely asserts that he or she is registered, or who makes false claims or representations as to the nature of his or her file contained in the registry, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) for the first violation and a civil penalty in the amount of five hundred dollars (\$500) for each subsequent violation, to be assessed and collected in a civil action brought by the Department of Consumer Affairs. All civil penalties collected shall be deposited in the General Fund. A person who lawfully delays registration pursuant to subdivision (b) of Section 2851 shall not be subject to a civil penalty for serving as a trustee without being registered until the time that subdivision (b) of Section 2851 authorizes his or her removal for failure to register.

(b) Any court that removes a trustee for cause, and any court that has accepted the resignation of a trustee, shall notify the Statewide Registry of that removal or resignation and the reason therefor. The courts shall consider that information prior to the appointment of a person or entity pursuant to a subsequent petition for appointment as trustee.

~~SEC. 46.~~

SEC. 41. Section 2853 of the Probate Code is amended to read:

2853. Notwithstanding any other provision of this chapter, in cases of urgency, where circumstances and justice warrant the appointment of a trustee and time is limited, a court may appoint a person as trustee without consulting the Statewide Registry or requiring registration prior to appointment.

~~SEC. 47.~~

SEC. 42. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any trustee when the person is related to the trustor by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.

(b) This chapter does not apply to any trustee who is serving for the benefit of not more than three people or not more than three families, or a combination of people or families that does not total more than three. The number of trust beneficiaries does not count for the purposes of calculating if a trustee falls within this exclusion. A trust excluded under subdivision (a) or (b) does not count for the purpose of calculating if a trustee falls within this exclusion. For the purposes of this subdivision, family means people who are related by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.

(c) This chapter does not apply to a trustee who is any of the following:

(1) Trust companies, as defined in Section 83.

(2) FDIC-insured institutions, their holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, “affiliate” means any entity that shares an ownership interest with or that is under the common control of, the FDIC-insured institution.

(3) Employees of any entity listed in paragraph (1) or (2) while serving as trustees in the scope of their duties.

~~SEC. 48.~~

SEC. 43. Section 2855 of the Probate Code is amended to read:

2855. It is the intent of the Legislature that:

(a) Counties that provide for registration of trustees continue to do so, and that the Statewide Registry not replace county registration.

1 (b) Courts maintain oversight over the complaint process in
2 order to safeguard the reputations of trustees against unfounded
3 complaints.

4 (c) A trustee who is reregistering with the Statewide Registry,
5 after having met all of the requirements stated in Section 2850,
6 not be required to reverify previously claimed college or graduate
7 degrees.

8 ~~SEC. 49.~~

9 *SEC. 44.* Section 2920 of the Probate Code is amended to
10 read:

11 2920. (a) If any person domiciled in the county requires a
12 guardian or conservator and there is no one else who is qualified
13 and willing to act and whose appointment as guardian or
14 conservator would be in the best interest of the person, the public
15 guardian shall apply for appointment as guardian or conservator
16 of the person, the estate, or the person and estate.

17 (b) The public guardian shall apply for appointment as
18 guardian or conservator of the person, the estate, or the person
19 and estate, if the court so orders. The court may make an order
20 under this subdivision on motion of an interested person or on the
21 court's own motion in a pending proceeding or in a proceeding
22 commenced for that purpose. The court shall order the public
23 guardian to apply for appointment as guardian or conservator of
24 the person, the estate, or the person and estate, on behalf of any
25 person domiciled in the county who appears to require a guardian
26 or conservator, ~~and there appears if it appears that there is no one~~
27 ~~else who is qualified and willing to act, and whose if that~~
28 ~~appointment as guardian or conservator appears to be in the best~~
29 ~~interest of the person.~~ The court shall not make an order under
30 this subdivision except after notice to the public guardian for the
31 period and in the manner provided for in Chapter 3 (commencing
32 with Section 1460) of Part 1, consideration of the alternatives,
33 and a determination by the court that the appointment is
34 necessary. The notice and hearing under this subdivision may be
35 combined with the notice and hearing required for appointment
36 of a guardian or conservator.

37 (c) The public guardian shall visit each proposed conservatee
38 or ward within 48 hours of receiving notice of the need for
39 assistance.

1 ~~SEC. 50.~~

2 *SEC. 45.* Division 8.7 (commencing with Section 9800) is
3 added to the Welfare and Institutions Code, to read:

4
5 DIVISION 8.7. CONSERVATORSHIP OMBUDSMAN
6

7 9800. There is within the California Department of Aging an
8 Office of the Conservatorship Ombudsman.

9 9801. (a) The office shall be under the direction of a chief
10 executive officer who shall be known as the Conservatorship
11 Ombudsman. The Conservatorship Ombudsman shall be
12 appointed by the director and shall report directly to the director.
13 He or she shall devote his or her entire time to the duties of his or
14 her position, and shall receive the salary otherwise provided by
15 law.

16 (b) Any vacancy occurring in the position of Conservatorship
17 Ombudsman shall be filled in the same manner as the original
18 appointment. Whenever the Conservatorship Ombudsman dies,
19 resigns, becomes ineligible to serve for any reason, or is removed
20 from office, the director shall appoint an acting Conservatorship
21 Ombudsman within 30 days, who shall serve until the
22 appointment and qualification of the Conservatorship
23 Ombudsman's successor, but in no event longer than four months
24 from the occurrence of the vacancy. The acting Conservatorship
25 Ombudsman shall exercise, during this period, all of the powers
26 and duties of the Conservatorship Ombudsman pursuant to this
27 chapter.

28 9802. (a) The Conservatorship Ombudsman shall possess at
29 least a bachelor's degree, and have a minimum of five years'
30 professional experience that shall include at least fiduciary asset
31 management and *in* at least three of the following four areas:

32 (1) Gerontology, long-term care, or other relevant social
33 services or health services programs.

34 (2) The legal system and the legislative process.

35 (3) Dispute or problem resolution techniques, including
36 investigation, mediation, and negotiation.

37 (4) Organizational management and program administration.

38 (b) The professional experience described in subdivision (a)
39 requires any reasonable combination of the fields described in
40 that subdivision for a total of five years, and does not require five

1 years' experience in each area. At the discretion of the director, a
2 master's or doctorate degree relevant to a field described in
3 subdivision (a) may be substituted for one or two years,
4 respectively, of professional experience. However, the
5 applicant's professional experience and field of study leading to
6 the master's or doctorate degree shall, nevertheless, include all of
7 the fields described in subdivision (a).

8 9803. ~~(a)~~—The Conservatorship Ombudsman may employ
9 technical experts and other employees that, in his or her
10 judgment, are necessary for the conduct of the business of the
11 office.

12 9804. The office may solicit and receive funds, gifts, and
13 contributions to support the operations and programs of the
14 office. The office may form a foundation eligible to receive
15 tax-deductible contributions to support the operations and
16 programs of the office. The office shall not solicit or receive any
17 funds, gifts, or contributions if the solicitation or receipt would
18 jeopardize the independence and objectivity of the office.

19 9805. (a) No representative of the office shall be held liable
20 for good faith performance of responsibilities under this chapter.

21 (b) No discriminatory, disciplinary, or retaliatory action shall
22 be taken against any person for any communication made, or
23 information given or disclosed, to aid the office in carrying out
24 its duties and responsibilities, unless the same was done
25 maliciously or without good faith. This subdivision is not
26 intended to infringe on the rights of the employer to supervise,
27 discipline, or terminate an employee for other reasons.

28 (c) All communications by a representative of the office, if
29 reasonably related to the requirements of that individual's
30 responsibilities under this chapter and done in good faith, shall be
31 privileged, and that privilege shall serve as a defense to any
32 action in libel or slander.

33 (d) Any representative of the office shall be exempt from
34 being required to testify in court as to any confidential matters,
35 except as the court may deem necessary to enforce the provisions
36 of this chapter.

37 9806. The department shall be responsible for establishing a
38 statewide reporting system to collect and analyze data relative to
39 complaints regarding conservatorships for the purpose of
40 identifying and resolving significant problems. The department

1 shall submit the data annually to the California Board of
2 Conservators and Guardians, the Judicial Council, and the
3 Legislature.

4 9807. (a) The office shall provide to the public information
5 and assistance regarding conservators.

6 (b) The office shall take complaints and concerns
7 communicated by, or on behalf of, conservatees, and review the
8 complaints to determine if they require further investigation.
9 Complaint review shall be done in an objective manner to
10 ascertain the pertinent facts. If the office determines that further
11 investigation is required, the office shall refer the complaint to
12 the relevant court, the Judicial Council, the California Board of
13 Conservators and Guardians, the Attorney General, the relevant
14 district attorney, or the relevant office of Adult Protective
15 Services, as appropriate, which shall investigate the complaint,
16 take all appropriate steps as warranted by the investigations, and
17 report its findings and actions to the office in a timely manner.

18 (c) At the conclusion of any review and investigation of a
19 complaint, as set forth in subdivision (b), the resolution shall be
20 reported to the complainant. If the office does not seek resolution
21 of a complaint, the complainant shall be notified in writing of the
22 decision not to investigate and the reasons for the decision.

23 9808. The Conservatorship Ombudsman shall have access to
24 any record of a state or local ~~government~~ *governmental* agency
25 that is necessary to carry out his or her responsibilities under this
26 chapter, including records rendered confidential.

27 9809. All records and files of the office relating to any
28 complaint made pursuant to this chapter and the identities of
29 complainants, witnesses, patients, or residents shall remain
30 confidential, unless disclosure is required by court order, or the
31 release of the information is to a law enforcement agency, public
32 protective services agency, or a licensing or certification agency
33 in a manner consistent with federal laws and regulations.

34 ~~SEC. 51.~~

35 *SEC. 46.* Sections 9, 10, 27 to 32, inclusive, 36, and 43 to 48,
36 inclusive, of this act shall become operative on January 1, 2008.

37 *SEC. 47.* *This act shall become operative only if Senate Bill*
38 *1116, Senate Bill 1550, and Senate Bill 1716 of the 2005–06*

- 1 *Regular Session are enacted and become effective on or before*
- 2 *January 1, 2007.*

O